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CONWELL LLC			MENDOZA, MICHAEL G	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/834,208
Filing Date: April 13, 2001
Appellant(s): WOLF, G. THOMAS

Thomas G. Wolf
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 10/26/2007 appealing from the Office action mailed 1/22/2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2,843,121	HUDSON	7-1958
5,701,892	BLEDSTEIN	12-1997
4,865,027	LAANEN ET AL.	9-1989

5,819,731

DYRUD ET AL.

10-1998

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 5-10, 12-13, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hudson 2843121 in view of Bledstein 5701892.

As to claims 5, 7, 8, and 10, Hudson teaches an oxygen mask 10 having a means for being secured over the nose and mouth of a patient comprising: an elastic band, points of attachment 15 on both sides of the mask, and the elastic band securable to the patient by pulling the ends anteriorially through the points of attachment (col. 2, lines 27-31). It should be noted that Hudson fails to teach a pair of bands extendible to loop over and around each ear of the patient.

2. Bledstein teaches a mask that uses a pair of bands affixed at four points of attachment and extendible to loop over and around each ear of a patient. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to replace band 17 with ear loops of Bledstein to prevent entanglement of bands in a user's hair, glasses, or hat and to make it easy to put on (col. 2, lines 32-33 and col. 6, line 10-17).

3. As to claim 6 and 9, Hudson/Bledstein teaches wherein the elastic bands are affixed at four separate points on the mask.

4. As to claim 14, Hudson teaches an oxygen mask for use on a patient, the oxygen mask comprising: a face mask molded from plastic comprising a larger part of the mask defined by a face-conforming periphery, a rim with an enlargement configured to

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substantially conform to the contour of the nose bridge of the patient; a first side portion and an opposite second side portion configured to substantially conform to contour of the face of the patient, and a lower portion configured to substantially conform to contour of the face of the patient below the mouth so as to form a breathing chamber about the mouth and nostrils of the patient (see figures). It should be noted that Hudson fails to teach a pair of bands extendible to loop over and around each ear of the patient.

5. Bledstein teaches a mask that uses a pair of bands affixed at points of attachment and extendible to loop over and around each ear of a patient. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to replace band 17 with ear loops of Bledstein to prevent entanglement of bands in a user's hair, glasses, or hat and to make it easy to put on (col. 2, lines 32-33 and col. 6, line 10-17). Hudson/Bledstein teaches wherein the elastic bands are affixed at four separate points on the mask.

6. As to claim 15, Hudson/Bledstein teaches the oxygen mask of claim 14, teaches wherein both ends of the straps is adjustably connected to the face mask (col. 2, lines 20-31).

7. As to claim 17, Hudson/Bledstein teaches the oxygen mask of claim 14, which additionally comprises an adapter plug 23.

8. Claims 12, 13, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hudson/Bledstein as applied to the claims above, and further in view of Laanen et al. 4865027.

9. As to claims 12, 13, and 18, Hudson/Bledstein teaches the mask of claims 5 and

8. It should be noted that Hudson/Bledstein fails to specifically teach the use of a flap valve.

10. Laanen et al. teaches a mask with a common valve (20) to vent exhaled gases.

Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to use a valve to allow exhaled air to be forced out to the atmosphere (col. 4, lines 58-60).

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hudson/Blestein as applied to the claims above, and further in view of Dyrud et al. 5819731.

11. Hudson/Blestein teaches the oxygen mask of claim 14. It should be noted that Hudson fails to teach wherein one end of each of the straps is adjustable connected to the face mask, and the second end of the strap is permanently attached.

12. Dyrud et al. teaches a mask with a common one end of each of strap is adjustable connected to a face mask, and the second end of each strap is permanently attached. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include the fastener 34 to fixedly attach the straps to prevent loss of the straps.

(10) Response to Argument

1. The appellant argues that the rejection does not provide an adequate factual basis on which to properly conclude that the presently claimed invention would have been obvious within the meaning of 35 U.S.C. 103(a).

2. As to the argument that the examiner does not address that both ends of each pair of bands are affixed at points of attachment to each of both sides, the bands extendible to loop over and around each ear of the patient, the combination of Hudson and Bledstein teaches both ends of each pair of bands are affixed at points of attachment. Bledstein shows in FIG. 2 and FIG. 5 one of the pair of bands, each end of the particular band attached to a mask. In FIG. 1, FIG. 4, and FIG. 6 Blestein shows one of the bands of the pair looping over an ear. It would follow that the second band of the pair would be configured the same way on the opposite side.

3. The appellant argues that Hudson only has one elastic band and does not disclose a pair. It is well known in the art of masks that a pair of bands fashioned as ear loops is an alternative to a single band wrapping around the head of a user. The examiner cited Blestein to overcome the deficiency of Hudson only disclosing one band. The motivation for combining Blestein is for an alternative to the band of Hudson making the mask easy to put on and to fit snugly without interfering with hairdo, glasses, goggles, or a hat (Bledstein on col. 6, lines 10-17).

4. The appellant argues that the mask of Hudson requires the user pinch straps prior to pulling the straps anteriorly for adjustment. The straps of Hudson are pulled anteriorly through points of attachment, which reads on the limitations as set forth in the claim.

5. The appellant argues that Bledstein is not an oxygen mask. The Bledstein reference is used for the teaching of ear loops not for the teaching of an oxygen mask,

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which is already taught by Hudson. However, Bledstein can be considered an oxygen mask since oxygen is able to be inhaled by the user.

6. The appellant argues that Bledstein does not teach the type of attachment as claimed in the application. The Bledstein reference is used for the teaching of ear loops not for the teaching of the type of attachment, which is already taught by Hudson. Hudson teaches the use of points of attachment that allow adjustability of straps.

7. The appellant has site declarations that have been submitted on 6/20/2007. The declarations were submitted after a final rejection, but on the date of filing a Notice of Appeal. The declarations have not been entered because the applicant failed to provide a showing of good and sufficient reasons why the declarations or other evidence is necessary and was not presented earlier.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Michael G. Mendoza/
Examiner, Art Unit 3734

Conferees:

/Todd E Manahan/
Supervisory Patent Examiner, Art Unit 3731
Marc Jimenez

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TQAS TC 3700